

LITIGATION ROSTER

PROPERTY TAX

OCTOBER 2013

**Property Tax
OCTOBER 2013**

NEW CASES

Case Name

Court/Case Number

None

CLOSED CASES

Case Name

Court/Case Number

CRUZ, LILY ESCOTO

Alameda County Superior Court
Case No. RG13670500

Please refer to the case roster for more detail regarding new and closed cases

PROPERTY TAX
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OCTOBER 2013

RICHARD BENSON (*formerly Joan Thayer*), **IN HIS CAPACITY AS MARIN COUNTY ASSESSOR v. Assessment Appeals Board No. 1**

(*Amicus Curiae Brief*)

Court of Appeal, First Appellate District: A134340

CA Supreme Court: S214329

Filed – 5/30/2012

BOE's Counsel

None

BOE Attorney

Kiren Chohan

Issue(s): This issue involves whether an “other than original transferor” can avoid a change in ownership when he severs his joint tenancy in favor of a tenancy in common. The superior court found the severance in question was a non-assessable event pursuant to [Revenue and Taxation Code section 62\(a\)](#). The superior court’s interpretation is inconsistent with the BOE’s longstanding advice regarding the proper assessment of joint tenancies. The Marin County Assessor filed an appeal and has asked the BOE to file an amicus brief in support of its position.

Audit/Tax Period: None

Amount: Unspecified

Status: Court of Appeal: BOE will file an amicus brief in support of Appellant Marin County Assessor. The On August 22, 2012, the Court granted BOE’s application to file its amicus curiae brief (filed on August 21, 2012) in support of Appellant Marin County Assessor. On September 26, 2013, the Court of Appeal reversed the trial court decision in favor of the taxpayer and issued an opinion in favor of the Marin County Assessor. Parties are to bear their own costs on appeal.

CA Supreme Court: On October 29, 2013, Petitioners filed a request for judicial notice in support of their petition for review in the CA Supreme Court.

EHP GLENDALE, LLC, et al. v. County of Los Angeles

(*Amicus Curiae Brief*)

CA Supreme Court: B244494

Court of Appeal, Second Appellate District: BC385925

Filed – 4/1/2013

BOE's Counsel

Marta Smith

BOE Attorney

Kiren Chohan

Issue(s): Clarification of the *Assessors' Handbook* section 502 guidance on application of the income approach to value in local property tax cases where non-taxable assets have increased the property’s gross operating income.

Audit/Tax Period: None

Amount: Unspecified

Status: Court of Appeal: BOE filed its Application to File an Amicus Brief together with the Amicus Brief in support of neither party on May 16, 2013. Appellant filed an opposition to BOE's Application to File an Amicus Brief on May 29, 2013. Oral argument was held June 27, 2013. The court granted BOE's motion to file an Application to file an Amicus Brief on July 10, 2013. BOE filed its Amicus Brief on the same day. On September 18, 2013, the Court of Appeal affirmed the trial court judgment in favor of the Los Angeles County Assessor, finding that the Assessor properly valued the hotel property using the income method consistent with Property Tax Rule 8, and relevant case law.

CA Supreme Court: On October 29, 2013, Plaintiff filed a petition for review in the CA Supreme Court.

ELK HILLS POWER, LLC v. California State Board of Equalization, et al.	
San Diego Superior Court Case No. 37-2008-00097074-CU-MC-CTL	Filed – 12/01/08
Court of Appeal, Fourth Appellate District Case No. D056943	
California Supreme Court Case No. S194121	
<u><i>Plaintiff's Counsel</i></u> Peter W. Michaels Law Offices of Peter Michaels	<u><i>BOE's Counsel</i></u> Tim Nader <u><i>BOE Attorney</i></u> Kiren Chohan

Issue(s): Whether BOE properly included the assumed costs of emissions reductions credits (ERCs) when valuing plaintiff's property under [Revenue and Taxation Code Section 110](#).

Audit/Tax Period: 2004-2008

Amount: Unspecified

Status: The trial court ordered summary judgment in favor of BOE. The Court of Appeal issued a published decision on May 10, 2011, affirming the trial court judgment and awarding BOE its costs on appeal. Elk Hills filed a Petition for Rehearing on May 25, 2011. On June 7, 2011, the Court denied Elk Hills' Petition for Rehearing. On June 20, 2011, Elk Hills Power filed a Petition for Review with the California Supreme Court. On July 7, 2011, CalTax submitted a Request for Depublication of the Court of Appeal Opinion with the California Supreme Court. BOE's Answer to Elk Hills' Petition for Review was filed July 11, 2011. BOE's Opposition to CalTax's Request for Depublication was filed on July 18, 2011. The case is fully briefed.

Supreme Court: The Supreme Court of California accepted the petition for review filed by Elk Hills Power, LLC on August 24, 2011. The case is fully briefed and was argued before the California Supreme Court on May 29, 2013, in San Francisco. The California Supreme Court reversed the Court of Appeal's judgment on August 12, 2013, stating that the Court of Appeal erred in affirming the trial court's granting of BOE and the county's summary judgment motion. The Supreme Court remanded the case to the Court of Appeal for further proceedings consistent with its decision. The California Supreme Court issued the Remittitur on September 12, 2013.

Court of Appeal: The Court of Appeal reversed its judgment and directed the trial court to enter a new order denying the summary judgment motion and conduct further proceedings with the Supreme Court decision. The court awarded Elk Hills costs on appeal.

NONPROFITS INSURANCE ALLIANCE OF CALIFORNIA; ALLIANCE MEMBER SERVICES, INC. v. County of Santa Cruz; State Board of Equalization, DOES 1-10

Santa Cruz County Superior Court: CV173140

Filed – 5/23/2012

BOE's Counsel

David Lew

BOE Attorney

Crystal Yu

Plaintiff's Counsel

Peter O. Glaessner

Lombardi, Loper & Conant

Issue(s): The issue in this case is whether plaintiffs are entitled to Welfare Organizational Exemptions and Organizational Clearance Certificates (OCC) under [Revenue and Taxation Code section 214\(a\)](#) and [Revenue and Taxation Code section 254.6](#). Plaintiffs are seeking a refund of property taxes from the county, and from BOE, declaratory relief and an order compelling issuance of the OCCs.

Audit/Tax Period:

Amount: \$410,673.38

Status: Nonprofits Insurance Alliance of California served the BOE with a First Amended Complaint to Recover Taxes Levied Against Tax-Exempt Welfare Organizations; Declaratory Relief and to Compel Issuance of Organizational Clearance Certificates Per [Revenue and Taxation Code § 254.6](#). A hearing was held on August 30, 2012. At the Case Management Conference on September 26, 2012, the court set a trial date for June 24, 2013, and continued the trial date to December 9, 2013. A case management conference was held on October 1, 2013. At the conference, the Court continued the trial date from December 9, 2013 to February 18, 2014.

SANTA BARBARA, Assessor for the County of v. Assessment Appeals Board No. 1

California Supreme Court, S205876

Court of Appeal, Second Appellate District: B229656

Santa Barbara County Superior Court: 01244457

(Amicus Curiae Brief)

BOE's Counsel

Stephen Lew

BOE Attorney

Kiren Chohan

Issue(s): The primary issue in the case is the proper valuation of transfers of individual ownership interests in resident-owned mobile home parks. ([Revenue and Taxation Code section 62.1](#)) On April 26, 2011, the Board approved the filing of an amicus brief in this case to support the appellant Santa Barbara County Assessor's position for the purpose of uniformity and to support those assessors that are following BOE's guidance regarding this issue.

Audit/Tax Period: None

Amount: Unspecified

Status: Pending. Appellant County Assessor for Santa Barbara filed Reply Brief on September 29, 2011. The BOE's application to file an amicus curiae brief in support of Appellant County of Santa Barbara was granted by the Court of Appeal on October 17, 2011. Oral argument was held on February 8, 2012. On May 16, 2012, the Court issued a published decision upholding the trial court's decision in favor of Respondents. Appellant's Petition for Rehearing, filed on May 30, 2012, was granted by the Court on June 13, 2012. On August 30, 2012, the Court affirmed the judgment of its decision in favor of Assessment Appeals Board and Rancho Goleta Lakeside Mobileers, Inc., et al., and against appellant Santa Barbara County Assessor.

Supreme Court: Case is being briefed in the Supreme Court. BOE's Application to File an Amicus Curaie Brief was filed on June 6, 2013. The Supreme Court granted BOE's Application to File an Amicus Curaie Brief and Amicus Curaie Brief, in support of Appellant Santa Barbara County Assessor, on June 25, 2013. The case will be argued on November 6, 2013.

SPRINT TELEPHONY PCS, L.P. v. State Board of Equalization, et al.

San Francisco Superior Court Case No. CGC-11-511398
Court of Appeal, First Appellate District, Case No. A134533
Plaintiff's Counsel
Richard N. Wiley
Law Offices of Richard Wiley

Filed – 06/01/11
BOE's Counsel
David Lew
BOE Attorney
Kiren Chohan

Issue(s): The issue in this case is whether plaintiff's 2008 Board-adopted unitary value of \$2,039,700,000 is overstated. ([California Constitution, Art. XIII, section 19](#)); ([Revenue and Taxation Code section 5148](#)).

Audit/Tax Period: 2008

Amount: \$9,000,000.00

Status: Sprint PCS served the Board with a First Amended Verified Complaint dated June 23, 2011. Hearing on Defendant-Counties Demurrers took place on October 20, 2011. On December 27, 2011, the Court overruled each of the three demurrers filed by the county defendants. On January 17, 2012, the Court granted the Counties Ex Parte Application for Stay of Proceedings if the Counties file a Writ of Mandate with Court of Appeal which was filed on February 10, 2012.

Court of Appeal: Upon receipt of Sprint's filing it Opposition to the Petition, the Court had directed the county defendants to file a reply to Sprint's Opposition by March 13, 2012. County Defendant's Petition was denied. Case is returning to the trial court.

Trial Court: On September 9, 2013, the Court issued a Minute Order requiring both parties to submit supplemental briefing by September 20, 2013. The DOJ, on behalf of the BOE filed its supplemental brief in support of BOE's motion for summary judgment, or in the alternative, motion for summary adjudication on September 20, 2013. On October 1, 2013, the Superior Court granted BOE's Motion for Summary Judgment finding that Plaintiffs failed to exhaust administrative remedies because they failed to file a petition that also constituted a claim for refund as required by the statute. On October 15, 2013, the Court ordered that the Defendants recover from Plaintiffs reasonable costs of suit in an amount to be determined. Notice of Entry of Judgment was filed on October 16, 2013.

VERIZON CALIFORNIA INC. v. California State Board of Equalization

Sacramento Superior Court Case No. 34-2011-00116029
Court of Appeal, Third Appellate District Case No. C074179
Plaintiff's Counsel
Carla Christofferson
O'Melveny & Myers LLP

Filed – 12/21/11
BOE's Counsel
Jill Bowers
BOE Attorney
Kiren Chohan

Issue(s): The issue in this case is whether plaintiff's 2007 Board-adopted unitary value of \$3,480,700,000 is overstated. ([California Constitution, Art. XIII, section 19](#)); ([Revenue and Taxation Code section 5148](#)).

Audit/Tax Period: 2007

Amount: \$5,900,000.00

Status: Verizon served BOE with a Verified Complaint for Refund of State Assessed Property Taxes dated December 22, 2011. BOE's response to Verizon's First Amended complaint was due and filed October 23, 2012. BOE filed a Motion to Strike and Demurrer on October 23, 2012. The Demurrer is based on Verizon's failure to name the remaining 29 counties in which it held unitary property as of the 2007 lien date as named defendants in this action that was brought against the BOE and 9-named defendant counties seeking a reassessment of its 2007 BOE-adopted unitary value.

Verizon filed its Oppositions to BOE's Demurrer and Motion to Strike on March 6, 2013. On March 12, 2013, BOE filed its response to Verizon's Opposition to BOE's Demurrer and a Motion to Strike Attorney Fees. At the March 19, 2013 hearing, the Court took the matter under submission. On April 16, 2013, the Court issued a final ruling on the Demurrer in favor of the BOE finding that all counties within which a state assessee owns property are indispensable parties that must be named defendants in a section 5148 refund action. Verizon filed a Motion for Reconsideration on May 1, 2013. BOE's response was due and was filed on May 20, 2013. A hearing on Verizon's Motion for Reconsideration is scheduled for June 3, 2013. Verizon's motion for consolidation of its cases was denied on May 29, 2013.

Court of Appeal: Verizon filed an appeal in the Court of Appeal, Third Appellate District on June 28, 2013. BOE filed its response on August 2, 2013. The record on appeal is complete and Verizon's opening brief is due on December 9, 2013.

VERIZON CALIFORNIA INC. (II) v. California State Board of Equalization

Sacramento Superior Court Case No. 34-2013-00138191

Filed – 4/8/2013

BOE's Counsel

Serajul Ali

BOE Attorney

Kiren Chohan

Plaintiff's Counsel

Carla Christofferson

O'Melveny & Myers LLP

Issue(s): The issue in this case is whether BOE's 2008 Board-adopted unitary value for plaintiff's state-assessed property in the amount of \$3,595,900,000.00 is overstated, and should be reassessed. ([California Constitution, Art. XIII, section 19](#)); ([Revenue and Taxation Code section 5148](#)).

Audit/Tax Period: 2008

Amount: \$5,900,000.00

Status: BOE's responsive pleading was filed on May 29, 2013. Verizon's response to BOE's pleading is due September 18, 2013. The hearing, scheduled for October 1, 2013 was continued to November 26, 2013. BOE filed an amended notice of demurrer and motion to strike portions of Plaintiff's complaint on October 13, 2013.

**PROPERTY TAX
CLOSED CASES
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OCTOBER 2013**

CRUZ, LILY ESCOTO & HEIRS OF NARCISCO v. SBE, et al.

Alameda County Superior Court: RG13670500

Filed – 03/08/2013

BOE's Counsel

Anne Michelle Burr

BOE Attorney

Kiren Chohan

Plaintiff's Counsel

Lily Escoto Cruz

In Pro Per

Issue(s): The issue in this case is whether the BOE and the Alameda County Property Tax Collectors erred in determining the proper assessed value of property owned by the heirs of Narcisco Escoto. Plaintiffs are seeking a reassessment and reduction in the value of locally assessed property.

Audit/Tax Period: None

Amount: \$40,000.00

Disposition: The case was dismissed on October 22, 2013.

DISCLAIMER

Every attempt has been made to ensure the information contained herein is valid and accurate at the time of publication. However, the tax laws are complex and subject to change. If there is a conflict between the law and the information found, decisions will be made based on the law.

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